

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANGEL SARMIENTO Y NAVE, DEFENDANT AND APPELLANT.

G.R. No. L-26183. June 19, 1975

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

A review of Criminal Case No. 78519 of the Court of First Instance of Manila which convicted appellant Angel Sarmiento y Nave of the crime of murder and sentenced him to the penalty of reclusion perpetua; to indemnify the heirs of the deceased in the sum of P6,000.00 and to pay the costs.

In the afternoon of March 12, 1965, the Electoral Tribunal of the House of Representatives was holding a session in the Supreme Court building at the corner of Taft Avenue and Padre Faura Streets, Manila. Atty. Manuel G. Verzosa was the deputy clerk of the first division of the Electoral Tribunal and as such was authorized to receive evidence relative to pending cases in the division and to submit a report thereon. One of such pending cases deliberated upon was the electoral protest of Fernando Campos against Justiniano Montano involving the congressional seat for the lone district of Cavite in the election of 1961. Shortly before 4:30 in the afternoon of that day, Atty. Verzosa went down to his car parked inside the Supreme Court Compound. As he was about to open the door of his car in order to board it a lone gunman who had been waiting for him fired at close range using a .45 caliber firearm. The first shot missed the victim. The second one hit him at the corner of the upper lip and the bullet came out at the back of the head to the left, macerating the brain and fracturing the skull. He fell on the ground on his back beside his car. As if to make sure that the victim was dead, the assailant fired two more times at the still body before him, hitting the victim in the face and in the neck. At the time of the shooting, a group of boy scouts of the U.P. Preparatory School were drilling on the lawn in front of the Rizal Hall building adjacent to the Supreme Court. They immediately cordoned the lifeless body of the victim until the authorities arrived. At the scene were found four empty .45 caliber shells. A .45 caliber bullet was also found on the ground beneath the neck of the deceased. The left hand of the victim still clutched his car keys. According to the autopsy report[1] of Dr. Angelo Singian, the deceased sustained the following external injuries, to wit:

"POSTMORTEM FINDINGS

EXTERNAL INJURIES:

(1)

Gunshot wound of entry at the corner of the upper lip measuring 1.1 cm. The bullet coursed obliquely upwards and backwards from the right to the left and exited on the left posterior parieto-occipital region of the head. This is the first wound inflicted.

(2)

Gunshot wound of entry on the right side of the face over the lower mandible, measuring 1.2 cm. x 1.3 cm. The bullet coursed obliquely downwards from the right to the left and exited on the left postero-lateral side of the neck. A 0.45 caliber slug from this wound was found on the pavement. This is the 2nd wound inflicted.

(3)

Gunshot wound of entry on the neck over the thyroid cartilage and slightly to the right of the midline, measuring 1.2 cm. The bullet coursed obliquely downwards from right to the left and exited over the left supra-scapular region at the back. A 0.45 caliber slug was found on the clothing beneath and the left shoulder.

INTERNAL FINDINGS:

CENTRAL NERVOUS SYSTEM:

Maceration of the frontal, left parietal and left occipital lobes of the brain and of the cervical cord.

RESPIRATORY SYSTEM:

Perforating thru and thru laceration of the thyroid cartilage.

OTHER VISCERAL ORGANS:

Essentially normal.

BONES AND JOINTS:

Comminuted fractures of the skull, right mandible and cervical vertebrae.

EVIDENCE:

A 0.45 caliber slug flattened and marked MV at the protruding lead base, and turn over to Det. Remigio.

CAUSE OF DEATH:

Shock due to multiple (three) gunshot wounds on the face and neck, macerating the brain, fracturing the skull and cervical vertebrae and lacerating the spinal cord.

Who killed Manuel G. Verzosa? Who was that lone gunman who waited near the victim's parked car and unmercilessly gunned him down in cold blood? To prove that it was appellant, the prosecution presented witnesses Julio Arambulo, Liza Rowena Go and Julio Ancheta, all of the U.P.-Preparatory School and Arturo Leano, an account executive in an advertising agency.

Julio Arambulo testified that he was drilling on the lawn in front of the Rizal Hall when he heard a gunshot. When he looked at where the shot came from, he saw a man inside the Supreme Court Compound aiming a gun at the deceased. He fired and the victim fell down. In that position the assailant fired two more successive shots at the victim. Thereafter, the man ran out of the gate of the Supreme Court, tucked his gun at his waistline and fled on foot along Padre Faura street towards Mabini street. The witness positively identified appellant as the assailant.

Liza Rowena Go testified that on the date in question she was a first year student at the U.P. Preparatory School. At about 4:30 o'clock that afternoon she was standing in front of the fence of the Supreme Court Compound near the gate waiting to take a jeepney to go home. There were four other students also waiting for transportation. Suddenly there was a loud explosion after which some persons started running. Believing that it was the "blow-out" of a truck tire that caused the explosion, she remained where she was. At this juncture, a man came out of the gate running. He was wearing eyeglasses and a hat, and he was smiling as he ran. As he passed by her at a distance of about two feet, his hat^[2] fell down. So she called his attention thus: "Mama, yong sombrero mo nahulog." He did not mind her and continued to run along Padre Faura street towards the direction of Nebraska street. On seeing this, she herself became alarmed and she ran to the U.P. Preparatory School. It was only then that she learned there had been a shooting at the Supreme Court Compound. She identified appellant as the man who passed by her running and whose hat fell down.

Julio Ancheta testified that at the time of the shooting, he was on the lawn in front of the Rizal Hall supervising the drill of the boy scouts; that shortly after four shots, he saw a man running westward along Padre Faura street in the act of tucking a .45 caliber gun at his waistline; that mistaking him for a peace officer running after a culprit, the witness also ran in the same direction a few paces behind; that upon reaching the corner of Florida street he decided to turn back which he did; and that upon returning to his fellow boy scouts and seeing the lifeless victim, they cordoned the body until a police car arrived. According to Ancheta, the man he saw running along Padre Faura street and who tucked a .45 caliber gun at his waistline is none other than appellant.

Witness Arturo Leño linked appellant to the crime. The witness stated that shortly after he heard shots from the Supreme Court Compound, appellant came out of the said compound and ran towards Florida street; that as he was running his hat fell down but he did not stop to retrieve it; and that before reaching the corner of Nebraska and Padre Faura streets, appellant boarded a slowly moving jeep with Plate No. 58 in big figures and 35 in small ones. This jeep upon subsequent investigation turned out to be owned by the appellant and registered in his name.

Appellant maintains he is not the assailant. He claims that the witnesses for the prosecution made a mistake in identifying him and pointed out certain discrepancies in the descriptions given by them with his own actual physical features.

We hold that the identity of appellant as the assailant of Deputy Clerk Manuel G. Verzosa has been established by clear and convincing evidence, and the court a quo correctly gave full faith and credence to the testimonies of the

witnesses for the prosecution. Indeed, the record is barren of any improper or evil motive for the state witnesses to make false imputations against appellant, if indeed they are, which circumstances further strengthens their credibility. It is an established rule that when the issue relates to the credibility of witnesses, the conclusion of the court a quo commands great weight and respect and should not be disturbed on the ground that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless of course it has overlooked certain facts of substance and value which, if considered, might alter the outcome of the case,[3] a situation which does not exist in the case before us.

While some inconsistencies in the descriptions may indeed be noted, they are however more apparent than real, and pertain to minor or collateral matters. Indeed, seldom if at all, can a witness be expected to give an exact and completely accurate description of an assailant, considering that the witness is affected by the occurrence of an extraordinary, exciting, or frightening incident. It is sufficient that his verbal portrait of the assailant is reasonably descriptive of the latter's general appearance, characteristic and bearing. In the case before us, what is most important is that these witnesses have positively identified appellant as the killer.

Appellant's defense of alibi that at the time of the killing he was at his house in Pasay City, a scant 2 or 3 kilometers from the scene of the crime, cannot prosper in the face of his positive identification by the prosecution witnesses.[4] Besides, for the defense of alibi to prosper, it is not enough to prove that the defendant was elsewhere when the crime was committed; it must likewise be shown by competent proof that considering the distance of the place where he was it was physically impossible for him to be at the scene of the crime at the time of its commission.[5] This appellant failed to do.

Appellant, however, in his vain attempt to escape criminal liability, attempted to prove that it was a certain Ricardo Dimero who killed the victim. In support thereof, the defense presented Hermogenes Torres who testified that Dimero admitted to him that he was the author of the crime. On this point, we find it fitting to quote with approval the apt observation of the trial court thus —

"The defense, in an effort to bolster the theory that it was someone else who committed the crime charged, presented the testimony of Carmen Villegas, Lorna Corazon-Sabater and Hermogenes Torres. It is interesting to note that all these witnesses are from Cavite. But of these three, most important is that of witness Hermogenes Torres. He affirmed that he knows a person by the name of Ricardo Dimero alias Carding; that at about 5:00 o'clock in the afternoon of March 13, 1965, Dimero went to the house and passed the night there; that the following morning after breakfast, while he was reading the Manila Times of March 14, (Exhs. 40, 40-a) Dimero saw an account of the shooting in the Supreme Court Compound and the pictures of the defendant herein, took the paper from him and pointing to the picture of the defendant remarked that he pitied the man because he was suspected as the author of a crime he did not commit; that asked why he made those remarks Dimero allegedly said that he was the one who committed the crime; that in view of the revelation of Dimero, the witness Torres requested Dimero to leave which he did. The Court has examined the testimony of the witness Torres and finds it unworthy of credence. Aside from the fact that Torres is a provincemate of the defendant and therefore inclined to favor the latter, the court finds it strange that the witness did not tell the court when he met Dimero the last time prior to March 14, 1965. And while the witness affirmed that after meeting Dimero in a cockpit sometime in 1949, and after having met him several times it does not appear that their relationship was closer than that of an ordinary acquaintance or even of a friend. If, indeed, it was Dimero who committed the charge, it is extremely improbable that he would run to a person with whom he had no intimacy and naively admitted to him that he was the one who killed Verzosa. A person who commits a crime, unless he surrenders to the authorities personally or through intermediaries, does not admit to any Tom and Harry the commission of the crime. His natural tendency is to keep the secret with himself. The defense would make the court believe that Dimero was such an extraordinary person as to act contrary to the normal behavior of people."

Further, the fact that Dimero was not placed on the witness stand to be cross-examined by the state, the veracity of his alleged authorship of the crime as revealed by Torres, renders it hearsay.

"Courts, therefore, will not submit the testimony of a witness as to what he has heard other persons say about the facts in dispute, because it is hearsay evidence and violates the provisions above quoted. The witness is not testifying to facts which he knows of his own personal knowledge. The person who gave him the information is not in court to testify under oath, cannot be cross-examined by the adverse party x x x"[6]

However, the indemnity awarded to the heirs of the deceased should be raised from P6,000.00 to P12,000.00.[7]

WHEREFORE, modified as indicated above, the judgment appealed from is hereby affirmed in all other respects. With costs against the appellant. So ordered.

Makalintal, C.J., Fernando, Antonio, and Martin, JJ., concur.

[1] Exhibit A.

[2] Exhibit E.

[3] People vs. Espejo, 36 SCRA 400.

[4] People vs. Baniaga, 1 SCRA 283.

[5] People vs. Lumantas, 28 SCRA 764.

[6] 3 Moran's Comments on the Rules of Court 1957 ed., 287.

[7] People vs. Pantoja, 25 SCRA 468.

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